SALES—REJECTION OF GOODS OF INFERIOR QUALITY.—The plaintiff agreed to sell four pieces of merchandise to the defendant. Two of the pieces being defective, the defendant rejected them, at the same time tendering the price of the remaining two. Notwithstanding § 125, subd. 3, N. Y. Pers. Prop. Law (Laws of 1911, c. 571, § 125, subd. 3) providing that "where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest", it was *held* (one judge dissenting) that the defendant had his choice of taking all or nothing, and could not reject the defective pieces alone. *Portfolio* v. *Rubin* (N. Y. Sup. Ct. 1920) 180 N. Y. Supp. 520.

The instant case is in accord with the common law before the statute. *Mendetz* v. *Wood & Co.* (1914) 86 Misc. 52, 148 N. Y. Supp. 92. If several kinds of articles are sold under a contract without an apportionment of the purchase price, the contract is entire, not severable. See *Buckeye Buggy Co.* v. *Montana Stables* (1906) 43 Wash. 49, 85 Pac. 1077. The dissenting judge urged that by analogy to § 125, subd. 1, providing that the buyer may accept a quantity of merchandise smaller than that contracted for where that and nothing more is delivered, it follows that the buyer might also accept a smaller quantity out of a larger mass including goods of defective quality. But the majority rightly argued that the statute should not be presumed to change the common law. *Cf. Woollcott* v. *Shubert* (1916) 217 N. Y. 212, 111 N. E. 829; *Thompson* v. *Thompson* (1910) 218 U. S. 611, 31 Sup. Ct. 111. The court interprets the word "description" in § 125, subd. 3 as equivalent to "kind" rather than "quality". *Cf. Gardner* v. *Lane* (1886) 94 Mass. 39. As a supplementary argument, the court suggests that subdivision 3 deals with a case in which "the seller delivers *the* goods he contracted to sell etc.", and thus excludes any case where less than all the goods bargained for are delivered. This argument seems unnecessarily strained. The court might better have rested its decision solely on the general principle above enunciated in view of the fact that the Uniform Sales Act was intended in main, as a codification of the then existing law. See Williston, Sales § 617.

WARRANTY—BREACH IN CONDITIONAL SALES BEFORE TITLE PASSES.—The plaintiff bought an automobile from the defendant under a contract to sell on condition; and before title had passed to him, he sought to recover damages for breach of an oral warranty. The court, after refusing to admit the oral warranty in evidence because it was inconsistent with the written warranty in the contract of sale, further *held,* that even if it were admissible, the plaintiff would fail, because a vendee cannot recover for a breach of warranty until title has passed to him. *Baca* v. *Fleming* (N. Mex. 1920) 187 Pac. 277.

The English courts, like the court in the instant case, treat a "warranty" in a contract to sell, in which the title does not pass by the contract, as a mere condition entitling the vendee to reject the goods on breach, but not to damages, unless he obtain title. Benjamin, Sales, 1003, 1004; English Sales of Goods Act § 11, 1; Williston, Sales, § 184. That the vendee later obtains possession, is immaterial according to the English view. No one can be injured by a diminution in the value of a chattel until he owns it. See *New Hamburg Mfg. Co.* v. *Webb* (1911) 23 Ont. L. R. 44. But this theory seems to overlook the true nature of ownership as an aggregate of rights which may be shared by several persons. Thus in the case of a conditional sale, the vendee has some of the